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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1954

EDWARD COCO, Petitioner,

vs.

FLORIDA, Respondent.

Certiorari

PETITION FOR WRIT OF CERTIORARI

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To the Honorable Chief Justice and Associate Justices of the United States:

Petitioner, Edward Coco, respectfully petitions this Honorable Court for a writ of certiorari to the Supreme Court of Florida to review its judgment of May 17, 1955 by which petitioner's petition for a writ of habeas corpus was denied.

Summary of the Matter Involved

Upon his second trial Edward Coco was convicted of murder and is now serving life in the State penitentiary. His first conviction was reversed, the second was affirmed. The record is here awaiting final action of Your Honors

in the matter of the petition of Coco for certiorari, No. 761, denied on May 17, 1955. Now pending on our petition for rehearing. We respectfully refer Your Honors to our petition for certiorari in No. 761 for our statement of the facts. Appended to that petition Your Honors will find the opinions of the Supreme Court of Florida rendered in the two murder cases. Appended to our petition for rehearing in No. 761, Your Honors will find, p. 7, a copy of our petition for habeas corpus addressed to the Supreme Court of Florida, identical with his petition addressed to Judge Choate, and, p. 16, a copy of the order of denial entered on the stated ground that Coco has failed to show probable cause to believe that he is detained in custody without lawful authority. The petition for habeas corpus addressed to the Florida Supreme Court contained the same claims made here in No. 761, plus the additional claims made in the petition for rehearing in No. 761, plus still further a claim by Coco that adverse publicity had made a fair trial impossible. All of these claims are predicated upon the assertion that Coco has been denied due process as guaranteed by the Fourteenth Amendment.

Questions Presented

1. Did the introduction of the gun in evidence, together with fingerprints, result in weighing the scales to the prejudice of the defendant?[1]

2. In his petition for habeas corpus addressed to the Supreme Court of Florida, Coco alleged that he has been convicted upon perjured evidence, knowingly used by the

[1] This is the same as Question No. 1 in No. 761, p. 8. In No. 761 Coco stated this question in various ways and respectfully wishes to adopt them here.

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prosecutors. Should not Coco have been given an opportunity to prove this allegation?[2]

3. Coco claims in his petition for habeas corpus that his fingerprints were forged upon a gun introduced in evidence. Should not Coco been afforded an opportunity to prove this allegation and to submit the record on the further question concerning knowledge?[3]

4. Coco claims in his petition for habeas corpus that the information was filed after the statute of limitations had run, that an indictment is essential and a six man jury is no better than no jury. When a state deprives one of these rights do we not present a violation of due process as guaranteed by the Fourteenth Amendment?[4]

5. Coco claims in his petition for habeas corpus that an unfavorable press made a fair trial impossible. Was he not entitled to a hearing on this allegation?[5]

6. The Supreme Court of Florida, without a hearing and without anything from the other side, held that our petition did not show probable cause to believe that Coco is being detained without lawful authority. The legal effect

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[2] This claim of the knowing use of perjury was made in No. 791, Question 7, p. 9. Here the question takes on added importance in view of the express holding of the Florida Supreme Court that no probable cause was shown by Coco in his petition for habeas corpus.

[3] This claim was not made in our petition in No. 761. It is included in our petition for rehearing in No. 761.

[4] This claim was not made in our petition in No. 761. It is included in our petition for rehearing in No. 761.

[5] This claim was not made anywhere prior to the presentation of our petitions for habeas corpus. Standing alone it may have been insufficient, as stated in our petition. If true it helps explain the verdict.

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is that after assuming the truth of our petition there has not been shown any violation of constitutional rights. As to rights guaranteed by the State this is final. The Supreme Court of Florida also necessarily passed upon the federal right claimed. Is it not true that this Honorable Court is not bound by the conclusion of the state court in this regard and that Coco is entitled to a review here? Is it not true that the facts having been admitted in determining their legal effect as a deprivation of Coco's rights under the Fourteenth Amendment Your Honors are as at full liberty to consider them as was the State Supreme Court?[6]

Jurisdiction Invoked

The jurisdiction of this Honorable Court is invoked under Title 28, Judicial Code and Judiciary § 344, United States Code, Judicial Code 237. The judgment below was entered May 17, 1955.

Opinions Below

The Supreme Court of Florida rendered no opinion in this habeas corpus case.[7]

Statement

We believe that this case has been sufficiently stated in the various papers on file in this Honorable Court.

Reasons for Granting Writ

1. The writ of certiorari is sought because the issues presented herein raise important questions of Federal law.

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[6] This question arises for the first time in these proceedings here and now. This is the first opportunity afforded Coco to present admitted facts to this Honorable Court.

[7] For reference to opinions in murder case please see our petition in No. 761.

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2. The State Supreme Court of Florida has decided federal questions of substance not heretofore determined by this Honorable Court.

3. The State Supreme Court has decided this case in a way not in accord with applicable decisions of this Honorable Court.

4. After the Supreme Court of Florida assumed the truth of the petition for habeas corpus it was error to hold in the absence of any hearing that rights guaranteed by the Fourteenth Amendment had not been violated. That error should be corrected in this Honorable Court.

Conclusion

It may prove fortunate for Coco that denial of relief below came promptly while this Honorable Court still retained jurisdiction of No. 761. We have quoted from Judge Choate in our petition for rehearing in No. 761 and have filed the transcript. Judge Choate held that Coco had not exhausted his state remedies until No. 761 was completed. Also Judge Choate indicated that he would be pleased to have some word from Your Honors as to the position to be taken by local federal courts. We hope that all of this now calls for an opinion here.

Concerning the right of this Honorable Court to again examine the record after giving due respect to the holding of the Supreme Court of Florida, Your Honors will find the authorities have been collected by Mr. Justice Black as a footnote in his dissent to *Feiner* v. *New York*, 340 U.S. 315, 322.

As we said in our petition for rehearing in No. 761, our point here concerning the need of an indictment, the toll of the statute of limitations and the illegality of a six man

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jury, is of no value if Your Honors adhere to *Adamson* v. *California*, 332 U.S. 46. Our argument is to be found in the dissent by Mr. Justice Black. The case at bar presents a number of errors which may be held to have had a cumulative effect not heretofore considered.

From *Hysler* v. *Florida*, 315 U.S. 411, we learn that a person under sentence may apply to the Supreme Court of the State, even though that court has affirmed his conviction, for permission to apply to the trial court for a writ of error *coram nobis*, provided that he first make an adequate showing of the substantiality of his claim. That said by Mr. Justice Murphy in *Wade* v. *Mayo*, 334 U.S. 672, would cause us to believe that we would not be required to exhaust this remedy, if it were not for *Darr* v. *Burford*, 339 U.S. 200. It appears to us that the Supreme Court of Florida has held that there is no substance to the claims made by Coco after assuming their truth. We would expect that Honorable Court to again make such decision in the absence of command by Your Honors. But if Your Honors see fit to deny this without more, Coco will be compelled to play it safe and try for *coram nobis* and then come here again, if refused.[8]

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[8] *Brown* v. *Allen*, 344 U.S. 443, indicates that petitioner need not pursue a collateral remedy. In *Bacom* v. *Sullivan*, 194 F. 2nd 166, the petitioner had been convicted in the State Court in Florida. It was held that the road had been cleared to apply to the federal courts. No mention is made of *coram nobis*.

In *People* v. *Leyra*, 304 N.Y. 468, 108 N.E. 2nd 673 a death penalty was affirmed in the State Court. The New York Court of Appeals certified that federal questions were necessarily passed upon but Your Honors denied certiorari, 345 U.S. 918. The condemned prisoner petitioned for habeas corpus before Judge Ryan, *Leyra* v. *Denno*, 113 F. Supp. 556. As no relevant facts were in dispute no request was made that testimony be taken. Judge Ryan based his denial of relief upon the record made in the State

Concerning the duty of the Supreme Court of Florida to have allowed Coco a hearing please see *Smith* v. *O'Grady*, 312 U.S. 329. Of course as Your Honors know *Mooney* v. *Holohan*, 294 U.S. 103, is our authority for the claim made by Coco that because his conviction was procured by the state prosecuting authorities solely by the use of perjured testimony known by them to be perjured and knowingly used by them in order to procure the conviction is without due process of law and in violation of the Fourteenth Amendment.

Courts. The Circuit Court affirmed in *United States* v. *Denno*, 208 F. 2nd 605, Your Honors granted certiorari, 347 U.S. 926, "because the constitutional question appeared substantial," 347 U.S. 558. Mr. Justice Minton dissenting, p. 584, has said that Your Honors denied certiorari in the original case on a petition that set up the same constitutional questions later raised in the habeas corpus proceedings. We respectfully submit that clarification will be most helpful to all concerned. Did Your Honors deny certiorari in order that the federal questions could be first decided by the local federal court? Is that the reason Coco was denied certiorari in No. 761? We note that in *Corona Daily Independent, et al.* v. *City of Corona*, 346 U.S. 833, Mr. Justice Douglas filed a memorandum in a case where Your Honors denied certiorari. In *Burns* v. *Wilson*, 346 U.S. 844, after Your Honors denied rehearing, Mr. Justice Frankfurter filed a separate opinion based upon further reflection and study. Mr. Justice Douglas filed a memorandum intended to help the trial court upon remand in *Welbon* v. *Atlantic Coast Line Railroad Co.*, 347 U.S. 980. In *Galloway* v. *Dowd, Warden*, 347 U.S. 1017, certiorari was denied "without prejudice to petitioner to initiate a new proceeding alleging refusal to allow an appeal." Adequate non-federal ground was given by Your Honors for denial of certiorari in *Scalf* v. *Skeen, Warden*, 346 U.S. 911. See also *Ex Parte Sztwiertnia*, 346 U.S. 930; *Bednarik* v. *Alvis, Warden*, 346 U.S. 931; *Isserman* v. *Ethics Committee*, 345 U.S. 927; *Rosenberg* v. *United States*, 345 U.S. 1003, 344 U.S. 889; *Weber* v. *United States*, 344 U.S. 834; *Du Bois* v. *Mossey*, 344 U.S. 869.

We respectfully pray for the writ of certiorari.[9] If that be denied we trust that Your Honors will see fit to make some announcement for the guidance of the courts below such as the one in *Burke* v. *Georgia*, 338 U.S. 941.[10]

Respectfully submitted,

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[9] In *Dixon* v. *Duffy*, 344 U.S. 143, Your Honors at first continued the cause to enable counsel to secure a determination from the State Supreme Court as to whether the judgment was intended to rest on an adequate independent state ground or whether decision of the federal claim was necessary to the judgment rendered. In the case at bar we respectfully submit that the State Supreme Court has made it clear that it has ruled that Coco has no rights under the Fourteenth Amendment, which decision is here reviewable.

[10] We pray that Your Honors will deem it proper to grant a rehearing in No. 761 issue the writ of certiorari and take the entire case.

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